

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1099

Citations Affected: IC 22-11-14; IC 22-11-14.5-2; IC 31-37-2-7; IC 35-47-7.

Synopsis: Fireworks sales, discharge, public safety fees, and injuries. Conference committee report for EHB 1099. Renames certain common fireworks as consumer fireworks. Authorizes the use of consumer fireworks on the property of the purchaser, on the property of another who has given permission for the use, and at special discharge locations. Authorizes the fire prevention and building safety commission to adopt rules specifying the conditions under which certain fire chiefs may grant a permit to a person to sponsor a special fireworks discharge location. Establishes requirements for the tent, structure, or temporary stand from which certain fireworks may be sold. Establishes annual registration fees for the retail sale of consumer fireworks that must be paid before the issuance of a certificate of compliance to a retailer. Removes the requirement that a purchaser of consumer fireworks provide a written assurance that the consumer fireworks will be shipped out of Indiana within five days of purchase. Establishes various penalties for: (1) the ignition, discharge, possession, or use of certain fireworks under certain conditions or at other than certain locations; or (2) the purchase or use of fireworks by a person less than 18 years of age. Requires an individual to be at least 18 years of age to sell consumer fireworks, and at least 16 years of age to sell certain specified fireworks. Sets times during the day when a person may use certain fireworks. Prohibits the sale of fireworks at retail from a motor vehicle. (Current law prohibits the sale of retail fireworks from a truck, van, or automobile.) Establishes a public safety fee of 5% on the retail sale of fireworks. Provides that the fee is to be collected by the department of state revenue and deposited in the state general fund. Specifies that a child commits a delinquent act if the child commits certain fireworks violations. Requires certain persons that treat a person for an injury that the practitioner or administrator identifies as resulting from fireworks or pyrotechnics to report the injury to the state department of health. Provides that the report is confidential. Requires the department of homeland security to report to the budget committee on the feasibility of establishing a regional program to provide certain training. Makes an appropriation from public safety fees to the department of homeland security for: (1) certain training programs; and (2) under certain circumstances, certain disaster related costs. Repeals an expired section of the Indiana Code. Repeals and relocates a definition. Makes conforming amendments. Makes technical corrections. **(This conference committee report: (1) removes language providing that a person is strictly liable for death, bodily injury, or**

property damage caused by that person's use of consumer fireworks; (2) revises the definition of resident wholesaler, importer, or distributor under certain circumstances; (3) revises requirements for the tent or structure in which certain fireworks may be sold; (4) revises language related to the quantity of certain fireworks that may be sold from a Class 1 structure; (5) authorizes an individual less than 18 years of age to sell certain fireworks; (6) revises language relating to the possession of a firework by a minor or the sale of a firework to a minor; (7) revises language related to the transferability of a certificate of compliance issued to a retailer of consumer fireworks or to other dealers of fireworks; (8) specifies that a child commits a delinquent act if the child commits certain fireworks violations; (9) under certain circumstances, makes an appropriation to the department of homeland security for certain disaster related costs; (10) revises the public safety fee on the retail sale of fireworks from 4% to 5%; (11) specifies that certain fireworks may not be sold from or stored at a temporary stand; (12) sets times during the day when a person may use certain fireworks; and (13) makes technical corrections related to an unnecessary definition, another definition, to internal cross-references, a criminal penalty, and certain sales of fireworks, and concerning mens rea.)

Effective: Upon passage; May 1, 2006; June 1, 2006.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1099 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 22-11-14-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this
- 4 chapter and IC 22-11-14.5:
- 5 "Auto burglar alarm" means a tube that contains pyrotechnic
- 6 composition that produces a loud whistle or smoke when ignited. A
- 7 small quantity of explosive, not exceeding fifty (50) milligrams, may
- 8 also be used to produce a small report. A squib is used to ignite the
- 9 device.
- 10 "Booby trap" means a small tube with string protruding from both
- 11 ends, similar to a party popper in design. The ends of the string are
- 12 pulled to ignite the friction sensitive composition, producing a small
- 13 report.
- 14 "Chaser" means a device, containing fifty (50) milligrams or less of
- 15 explosive composition, that consists of a small paper or cardboard tube
- 16 that travels along the ground upon ignition. A whistling effect is often
- 17 produced, and a small noise may be produced.
- 18 "Cigarette load" means a small wooden peg that has been coated with
- 19 a small quantity of explosive composition. Upon ignition of a cigarette
- 20 containing one (1) of the pegs, a small report is produced.
- 21 ~~"Common"~~ "Consumer firework" means a small firework that is

designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. ~~Common Consumer~~ fireworks:

(1) include:

~~(A) ground and hand held sparkling devices, which include dipped stick, certain wire sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;~~

~~(B) (A) aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines, and shells;~~

~~(C) (B) ground audible devices, which include firecrackers, salutes, and chasers; and~~

~~(D) (C) firework devices containing combinations of two (2) or more of the effects described in the preceding three (3) clauses (A) and (B); and~~

(2) do not include the following novelties and trick noisemakers:

~~(A) Snakes or glow worms;~~

~~(B) Smoke devices;~~

~~(C) Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item;~~

~~(D) Trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms; items referenced in section 8(a) of this chapter.~~

"Cone fountain" means a cardboard or heavy paper cone which contains up to fifty (50) grams of pyrotechnic composition, and which produces the same effect as a cylindrical fountain.

"Cylindrical fountain" means a cylindrical tube not exceeding three-quarters (3/4) inch in inside diameter and containing up to seventy-five (75) grams of pyrotechnic composition. Fountains produce a shower of color and sparks upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), a wooden or plastic base to be placed on the ground (base fountain), or a wooden handle or cardboard handle for items designed to be hand held (handle fountain).

"Dipped stick" or "wire sparkler" means a ~~common firework that consists of a~~ stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition does not exceed one hundred (100) grams per item. Those devices containing chlorate or perchlorate salts do not exceed five (5)

grams in total composition per item. Wire sparklers that contain no magnesium and that contain less than one hundred (100) grams of composition per item are not included in the category of ~~common~~ **consumer** fireworks.

"Distributor" means a person who sells fireworks to wholesalers and retailers for resale.

"Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

"Firecracker" or "salute" is a device that consists of a small paper wrapped or cardboard tube containing not more than fifty (50) milligrams of pyrotechnic composition and that produces, upon ignition, noise, accompanied by a flash of light.

"Firework" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of ~~common~~ **consumer** fireworks, **items referenced in section 8(a) of this chapter**, and special fireworks. The following items are excluded from the definition of fireworks:

- (1) Model rockets.
- (2) Toy pistol caps.
- (3) Emergency signal flares.
- (4) Matches.
- (5) Fixed ammunition for firearms.
- (6) Ammunition components intended for use in firearms, muzzle loading cannons, or small arms.
- (7) Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms.
- (8) Indoor pyrotechnics special effects material.
- (9) M-80s, cherry bombs, silver salutes, and any device banned by the federal government.**

"Flitter sparkler" means a narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. These devices do not use a fuse for ignition, but rather are ignited by igniting the paper at one (1) end of the tube.

"Ground spinner" means a small spinning device that is similar to wheels in design and effect when placed on the ground and ignited, and that produces a shower of sparks and color when spinning.

"Helicopter" or "aerial spinner" is a spinning device:

- (1) that consists of a tube up to one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;
- (2) to which some type of propeller or blade device is attached; and
- (3) that lifts into the air upon ignition, producing a visible or audible effect at the height of flight.

"Illuminating torch" means a cylindrical tube that:

- (1) contains up to one hundred (100) grams of pyrotechnic composition;
- (2) produces, upon ignition, a colored fire; and
- (3) is either a spike, base, or handle type device.

1 "Importer" means:

- 2 (1) a person who imports fireworks from a foreign country; or
 3 (2) a person who brings or causes fireworks to be brought within
 4 this state for subsequent sale.

5 "Indoor pyrotechnics special effects material" means a chemical
 6 material that is clearly labeled by the manufacturer as suitable for
 7 indoor use (as provided in National Fire Protection Association
 8 Standard 1126 (2001 edition)).

9 "Interstate wholesaler" means a person who is engaged in interstate
 10 commerce selling fireworks. ~~not approved for sale in Indiana.~~

11 "Manufacturer" means a person engaged in the manufacture of
 12 fireworks.

13 "Mine" or "shell" means a device that:

- 14 (1) consists of a heavy cardboard or paper tube up to two and
 15 one-half (2 1/2) inches in inside diameter, to which a wooden or
 16 plastic base is attached;
 17 (2) contains up to forty (40) grams of pyrotechnic composition; and
 18 (3) propels, upon ignition, stars (pellets of pressed pyrotechnic
 19 composition that burn with bright color), whistles, parachutes, or
 20 combinations thereof, with the tube remaining on the ground.

21 "Missile-type rocket" means a device that is similar to a sky rocket in
 22 size, composition, and effect, and that uses fins rather than a stick for
 23 guidance and stability.

24 "Party popper" means a small plastic or paper item containing not
 25 more than sixteen (16) milligrams of explosive composition that is
 26 friction sensitive. A string protruding from the device is pulled to ignite
 27 it, expelling paper streamers and producing a small report.

28 "Person" means an individual, an association, an organization, a
 29 limited liability company, or a corporation.

30 "Pyrotechnic composition" means a mixture of chemicals that
 31 produces a visible or audible effect by combustion rather than
 32 deflagration or detonation. Pyrotechnic compositions will not explode
 33 upon ignition unless severely confined.

34 **"Responding fire department" means the paid fire department**
 35 **or volunteer fire department that renders fire protection services**
 36 **to a political subdivision.**

37 "Retail sales stand" means a temporary business site or location
 38 where goods are to be sold.

39 "Retailer" means a person who purchases fireworks for resale to
 40 consumers.

41 "Roman candle" means a device that consists of a heavy paper or
 42 cardboard tube not exceeding three-eighths (3/8) inch in inside diameter
 43 and that contains up to twenty (20) grams of pyrotechnic composition.
 44 Upon ignition, up to ten (10) stars (pellets of pressed pyrotechnic
 45 composition that burn with bright color) are individually expelled at
 46 several second intervals.

47 "Sky rocket" means a device that:

- 48 (1) consists of a tube that ~~does not exceed one-half (1/2) inch in~~
 49 ~~inside diameter and that contains up to twenty (20) grams of~~

pyrotechnic composition;

(2) contains a ~~wooden~~ stick for guidance and stability; and

(3) rises into the air upon ignition, producing a burst of color or noise at the height of flight.

"Smoke device" means a tube or sphere containing pyrotechnic composition that produces white or colored smoke upon ignition as the primary effect.

"Snake" or "glow worm" means a pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices do not contain mercuric thiocyanate.

"Snapper" means a small, paper wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.

"Special discharge location" means a location designated for the discharge of consumer fireworks by individuals in accordance with rules adopted under section 3.5 of this chapter.

"Special fireworks" means fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than one hundred thirty (130) milligrams of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other exhibition display items that exceed the limits for classification as ~~common~~ **consumer** fireworks.

"Trick match" means a kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

"Trick noisemaker" means an item that produces a small report intended to surprise the user.

"Wheel" means a pyrotechnic device that:

- (1) is attached to a post or tree by means of a nail or string;
- (2) contains up to six (6) driver units (tubes not exceeding one-half (1/2) inch in inside diameter) containing up to sixty (60) grams of composition per driver unit; and
- (3) revolves, upon ignition, producing a shower of color and sparks and sometimes a whistling effect.

"Wholesaler" means a person who purchases fireworks for resale to retailers.

SECTION 2. IC 22-11-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The fire prevention and building safety commission ~~may~~ **shall**:

(1) adopt rules under IC 4-22-2 for the granting of permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals; and

(2) establish by rule the fee for the permit, which shall be paid into the fire and building services fund created under IC 22-12-6-1.

(b) The application for a permit required under subsection (a) must:

(1) name a competent operator who is to officiate at the display;

- (2) set forth a brief resume of the operator's experience;
- (3) be made in writing; and
- (4) be received with the applicable fee by the ~~office of the state fire marshal~~ **division of fire and building safety** at least five (5) business days before the display.

No operator who has a prior conviction for violating this chapter may operate any display for one (1) year after the conviction.

(c) Every display shall be handled by a qualified operator approved by the chief of the fire department of the municipality in which the display is to be held. A display shall be ~~so~~ located, discharged, or fired as, in the opinion of:

- (1) the chief of the fire department of the city or town in which the display is to be held; or
- (2) the township fire chief or the fire chief of the municipality nearest the site proposed, in the case of a display to be held outside of the corporate limits of any city or town;

after proper inspection, is not hazardous to property or person.

(d) A permit granted under this section is not transferable.

(e) A denial of a permit by a municipality shall be issued in writing before the date of the display.

(f) A person ~~who possesses, transports, or delivers~~ **may not possess, transport, or deliver special** fireworks, except as authorized under this section. ~~commits a Class A misdemeanor.~~

SECTION 3. IC 22-11-14-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.5. The fire prevention and building safety commission may adopt rules under IC 4-22-2 that specify the conditions under which the chief of a municipal or township fire department may grant a permit to a person to sponsor a special discharge location in the municipality or township.**

SECTION 4. IC 22-11-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Nothing in this chapter shall be construed to prohibit:

- (1) any resident wholesaler, manufacturer, importer, or distributor from selling:
 - (A) at wholesale fireworks not prohibited by this chapter; or
 - (B) **consumer** fireworks ~~not approved for sale in Indiana~~ if they are to be ~~shipped directly out of state within five (5) days of the date of sale;~~ **used:**
 - (i) **on the property of the purchaser;**
 - (ii) **on the property of another who has given permission to use the consumer fireworks; or**
 - (iii) **at a special discharge location as set forth in section 3.5 of this chapter;**
- (2) the use of fireworks by railroads or other transportation agencies for signal purposes or illumination;
- (3) the sale or use of blank cartridges for:
 - (A) a show or theater;

(B) signal or ceremonial purposes in athletics or sports; or

(C) use by military organizations;

(4) the intrastate sale of fireworks not approved for sale in Indiana between interstate wholesalers;

(5) the possession, sale, or disposal of fireworks, incidental to the public display of Class B fireworks, by wholesalers or other persons who possess a permit to possess, store, and sell Class B explosives from the Bureau of Alcohol, Tobacco, ~~and Firearms and~~ **Explosives of the** United States Department of ~~the Treasury;~~ **Justice;** or

(6) the use of indoor pyrotechnics special effects material before an indoor or outdoor proximate audience.

(b) For the purposes of this section, a resident wholesaler, importer, or distributor, is a person who:

(1) is a resident of Indiana;

(2) possesses for **storage or** resale ~~common~~ fireworks approved or not approved for sale in Indiana;

(3) is engaged in the interstate sale of ~~common~~ fireworks described in subdivision (2) as an essential part of a business that is located in a permanent structure and is open at least six (6) months each year; **and**

~~(4) sells common fireworks described in subdivision (2) only to purchasers who provide a written and signed assurance that the fireworks are to be shipped out of Indiana within five (5) days of the date of sale; and~~

~~(5) (4) has possession of a certificate of compliance issued by the state fire marshal under section 5 of this chapter.~~

~~(c) A purchaser may not provide a written and signed assurance that the fireworks purchased are to be shipped out of Indiana and then sell or use them in Indiana.~~

SECTION 5. IC 22-11-14-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) A retailer may sell consumer fireworks and items referenced in section 8(a) of this chapter from a tent under the following conditions:**

(1) The tent may not be larger than one thousand five hundred (1,500) square feet.

(2) There may be only one (1) tent for each registration granted under section 11(a) of this chapter.

(3) The tent may not be located closer than one hundred (100) feet from a permanent structure.

(4) A vehicle may not be parked closer than twenty (20) feet from the edge of the tent.

(5) The tent must be fire retardant.

(6) The sales site must comply with all applicable local zoning and land use rules.

(7) Sales of fireworks may be made from the tent for not more than forty-five (45) days in a year.

(8) The weight of consumer fireworks in a tent may not exceed

three thousand (3,000) gross pounds of consumer fireworks.

(9) A retailer that legally operated a tent with a registration in 2005 may continue operation in a tent in 2006 and the following years. A registration under section 11(a) of this chapter is required for operation in 2006 and following years. For purposes of this subdivision, a retailer includes a resident wholesaler who supplied consumer fireworks to an applicant for a tent registration in 2005.

(10) The retailer holds a valid registration under section 11(a) of this chapter.

(b) A retailer may sell consumer fireworks and items referenced in section 8(a) of this chapter from a Class 1 structure (as defined in IC 22-12-1-4) if the Class 1 structure meets the requirements of any of the following subdivisions:

(1) The structure complied with the rules for a B-2 or M building occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1:

(A) in which consumer fireworks were sold or stored on or before July 4, 2003; and

(B) in which no subsequent intervening nonfireworks sales or storage use has occurred.

(2) The structure complied with the rules for a B-2 or M building occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1;

(A) in which consumer fireworks were sold or stored on or before July 4, 2003;

(B) in a location at which the retailer was registered as a resident wholesaler in 2005; and

(C) in which the retailer's primary business is not the sale of consumer fireworks.

(3) The structure complies with the rules for an H-3 building occupancy classification under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1, or the equivalent occupancy classification adopted by subsequent rules of the fire prevention and building safety commission.

(4) The structure complies with the rules adopted after July 3, 2003, by the fire prevention and building safety commission established under IC 22-12-2-1 for an M building occupancy classification under the Indiana building code.

A registration under section 11(a) of this chapter is required for operation in 2006 and following years.

(c) This subsection does not apply to a structure identified in subsection (b)(1), (b)(2), (b)(3), or (b)(4). A retailer may sell consumer fireworks and items referenced in section 8(a) of this chapter from a structure under the following conditions:

(1) The structure must be a Class 1 structure in which

consumer fireworks are sold and stored.

(2) The sales site must comply with all applicable local zoning and land use rules.

(3) The weight of consumer fireworks in the structure may not exceed three thousand (3,000) gross pounds of consumer fireworks.

(4) The retailer holds a valid registration under section 11(a) of this chapter.

(5) A retailer that sold consumer fireworks and operated from a structure with a registration in 2005 may continue in operation in the structure in 2006 and the following years. A registration under section 11(a) of this chapter is required for operation in 2006 and following years.

(d) The state fire marshal or a member of the division of fire and building safety staff shall, under section 9 of this chapter, inspect tents and structures in which fireworks are sold. The state fire marshal may delegate this responsibility to a responding fire department with jurisdiction over the tent or structure, subject to the policies and procedures of the state fire marshal.

(e) A retailer shall file an application for each retail location on a form to be provided by the state fire marshal.

(f) This chapter does not limit the quantity of items referenced in section 8(a) of this chapter that may be sold from any Class 1 structure that complied with the rules of the fire prevention and building safety commission in effect before May 21, 2003.

SECTION 6. IC 22-11-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The state fire marshal shall remove at the expense of the owner, all stocks of fireworks or combustibles possessed, transported, or delivered in violation of this chapter.

(b) The state fire marshal shall stop the shipments and sale of fireworks, novelties, and trick noisemakers unless, prior to shipment into this state for sale, the manufacturer, wholesaler, importer, or distributor of the fireworks, novelties, and trick noisemakers submits to the state fire marshal:

(1) a complete description of each item proposed to be shipped into Indiana;

(2) a written certification that the items are manufactured in accordance with section 1 of this chapter; and

(3) an annual registration fee of one thousand dollars (\$1,000). **The registration fee shall be collected by the state fire marshal and deposited in the fire and building services fund as set forth in IC 22-12-6-1(c).**

A manufacturer, wholesaler, importer, or distributor of fireworks, novelties, and trick noisemakers must submit a list to the state fire marshal on or before June 1 of each year. The list shall contain the name and address of each retail location of each of the customers of the manufacturer, wholesaler, importer, or distributor at which items referenced in section 8(a) of this chapter will be sold. If upon

inspection the state fire marshal finds that this chapter has been complied with, an annual certificate of compliance shall be issued to the manufacturer, wholesaler, importer, or distributor. An annual certificate of compliance **may not be applied for after June 15 of a year and** expires December 31 of the year ~~during~~ **in** which the certificate is issued. Each manufacturer, wholesaler, importer, or distributor must obtain a certificate of compliance. The certificate is not transferable ~~except that A retailer that offers the items for sale to the public is entitled to receive a certified copy of the certificate from the manufacturer, wholesaler, importer, or distributor from which the retailer purchases the items.~~ **except to a subsequent owner or operator of a business at the same location in accordance with the policies and guidelines of the state fire marshal.** A certified copy of the certificate of compliance must be posted in each location where the items are offered for sale to the public. If upon inspection the state fire marshal finds that this chapter has not been complied with, the state fire marshal shall refuse to issue a certificate of compliance and state the reasons for the refusal. A copy of the order denying the issuance of a certificate of compliance and the reasons shall be forwarded to the manufacturer, wholesaler, importer, or distributor. The state fire marshal may revoke any certificate of compliance issued to any manufacturer, wholesaler, importer, or distributor if the holder of the certificate has violated this chapter.

(c) All fireworks, novelties, and trick noisemakers shipped into Indiana, or manufactured and sold in Indiana, must have distinctly and durably painted, stamped, printed, or marked on the package, box, or container in which the items are enclosed the exact number of pieces in the container.

(d) It is unlawful for a manufacturer, wholesaler, importer, or distributor to sell at wholesale, offer to sell at wholesale, or ship or cause to be shipped into Indiana fireworks, novelties, or trick noisemakers unless the manufacturer, wholesaler, importer, or distributor has been issued and holds a valid certificate of compliance issued under subsection (b). This subsection applies to nonresidents and residents of Indiana.

SECTION 7. IC 22-11-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a)** A person who **recklessly, knowingly, or intentionally** violates ~~section 4(c), section 2(f), 4.5, 5(c), 5(d), 7, or 8 8(a), 8(c), 8(d), 10, or 11(c)~~ of this chapter commits a Class A misdemeanor.

(b) A person who ignites, discharges, or uses consumer fireworks at a site other than:

(1) a special discharge location;

(2) the property of the person; or

(3) the property of another who has given permission to use the consumer fireworks;

commits a Class C infraction. However, if a person recklessly, knowingly, or intentionally takes an action described in this subsection within five (5) years after the person previously took an

1 action described in this subsection, whether or not there has been
 2 a judgment that the person committed an infraction in taking the
 3 previous action, the person commits a Class C misdemeanor.

4 (c) A person less than eighteen (18) years of age who possesses or
 5 uses a firework when an adult is not present and responsible at the
 6 location of the possession or use commits a Class C infraction.
 7 However, if a person possesses or uses a firework when an adult is
 8 not present and responsible at the location of the possession or use
 9 within five (5) years after a previous possession or use by the
 10 person as described in this subsection, whether or not there has
 11 been a judgment that the person committed an infraction in the
 12 previous possession or use, the person commits a delinquent act
 13 under IC 31-37.

14 (d) A person who ignites, discharges, or uses consumer
 15 fireworks:

16 (1) after 11 p.m. except on a holiday (as defined in
 17 IC 1-1-9-1(a)) or December 31, on which dates consumer
 18 fireworks may not be ignited, discharged, or used after
 19 midnight; or

20 (2) before 9 a.m.;

21 commits a Class C infraction. However, if a person recklessly,
 22 knowingly, or intentionally takes an action described in this
 23 subsection within five (5) years after the person previously took an
 24 action described in this subsection, whether or not there has been
 25 a judgment that the person committed an infraction in taking the
 26 previous action, the person commits a Class C misdemeanor.

27 (e) A person who recklessly, knowingly, or intentionally uses
 28 consumer fireworks and the violation causes harm to the property
 29 of a person commits a Class A misdemeanor.

30 (f) A person who recklessly, knowingly, or intentionally uses
 31 consumer fireworks and the violation results in serious bodily
 32 injury to a person commits a Class D felony.

33 (g) A person who recklessly, knowingly, or intentionally uses
 34 consumer fireworks and the violation results in the death of a
 35 person commits a Class C felony.

36 (h) A person who knowingly or intentionally fails to collect or
 37 remit to the state the public safety fees due under section 12 of this
 38 chapter commits a Class D felony.

39 SECTION 8. IC 22-11-14-7 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) A retailer
 41 selling ~~fireworks~~ items referenced in section 8(a) of this chapter at
 42 one (1) or more temporary stands must obtain a fireworks stand retail
 43 sales permit, referred to in this section as a "permit", from the state fire
 44 marshal.

45 (b) An application for a permit must be made before June 1 of each
 46 year and must require that at least the following information be supplied
 47 by the retailer:

48 (1) The retailer's retail merchant certificate number or proof of
 49 application for a certificate number.

(2) The location of each **retail sales** stand.
 The state fire marshal shall, within seven (7) days after the receipt of an application for a permit, either issue the permit or notify the applicant of the denial of the permit.

(c) The retailer must pay to the state fire marshal an annual permit fee set under IC 22-12-6-8. If the state fire marshal approves an application for a permit, ~~he~~ **the state fire marshal** shall issue a permit to the retailer. The permit expires one (1) year after the date of issuance.

(d) The permit shall be posted by the retailer at the **retail sales** stand so that it is easily seen by the public. However, the state fire marshal's issuance of a permit does not constitute approval of the fireworks offered for sale by the retailer. The retailer is responsible for determining that all fireworks which ~~he~~ **the retailer** offers for sale conform to applicable law.

(e) At each **retail sales** stand, the retailer shall provide:

(1) a posted certificate of compliance, including a descriptive list of approved fireworks; and

(2) a ~~supervisor~~ **salesperson** who is at least sixteen (16) years of age.

(f) Fireworks may not be sold at retail from ~~trucks, vans, or automobiles.~~ **a motor vehicle (as defined in IC 9-13-2-105).**

(g) Fireworks, not including those referenced in section 8(a) of this chapter, may not be sold from or stored at a temporary stand.

SECTION 9. IC 22-11-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a)** A person shall not sell at retail, ~~or~~ offer for sale at retail, ~~or deliver any fireworks, novelties, or trick noisemakers other than~~ the following **items to a person less than eighteen (18) years of age:**

(1) Dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts may not exceed five (5) grams in total composition per item.

(2) Cylindrical fountains.

(3) Cone fountains.

(4) Illuminating torches.

(5) Wheels.

(6) Ground spinners.

(7) Flitter sparklers.

(8) Snakes or glow worms.

(9) Smoke devices.

(10) Trick noisemakers, which include:

(A) Party poppers.

(B) Booby traps.

(C) Snappers.

(D) Trick matches.

(E) Cigarette loads.

(F) Auto burglar alarms.

(b) A retailer or wholesaler of consumer fireworks may sell consumer fireworks to a person at least eighteen (18) years of age.

1 (c) An individual who sells consumer fireworks must be at least
2 eighteen (18) years of age.

3 (d) An individual who sells an item set forth in subsection (a)
4 must be at least sixteen (16) years of age.

5 (e) The fire prevention and building safety commission may
6 adopt rules under IC 4-22-2 establishing procedures to ensure
7 compliance with the age limitations set forth in this section.

8 SECTION 10. IC 22-11-14-10 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. ~~(a)~~ Each
10 interstate wholesaler shall keep a record of each sale of **special**
11 fireworks. ~~not approved for sale in Indiana.~~ This record must include:

- 12 (1) the purchaser's name;
- 13 (2) the purchaser's address; and
- 14 (3) the date of the sale.

15 These records shall be kept for three (3) years and be available for
16 inspection by the fire marshal.

17 ~~(b) Each resident wholesaler shall post in a prominent location in the~~
18 ~~wholesaler's place of business a sign that reads as follows:~~

19 "Under Indiana law, a resident wholesaler of fireworks may sell
20 fireworks not approved for sale in Indiana only to other resident
21 wholesalers and to purchasers who provide a written and signed
22 assurance that the fireworks are to be shipped out of Indiana within
23 five (5) days of the date of sale. A purchaser who provides a written
24 and signed assurance that fireworks purchased are to be shipped out
25 of Indiana within five (5) days of the date of sale and who then sells
26 the fireworks in Indiana or uses them in Indiana commits a Class A
27 misdemeanor, which is punishable by imprisonment for up to one
28 ~~(1)~~ year and a fine of up to five thousand dollars (\$5,000)."

29 The state fire marshal shall provide interstate wholesalers with signs for
30 the purposes of this subsection.

31 SECTION 11. IC 22-11-14-11 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE MAY 1, 2006]: Sec. 11. (a) A retailer may not sell
34 consumer fireworks until the retailer has:

- 35 (1) filed the application required under section 4.5(e) of this
36 chapter with the state fire marshal for each location from
37 which the retailer proposes to sell the consumer fireworks,
38 which must be filed on an annual basis; and
 - 39 (2) paid an accompanying registration fee of:
 - 40 (A) one thousand dollars (\$1,000) for the first location if a fee
41 under section 5(b)(3) of this chapter has not been paid;
 - 42 (B) five hundred dollars (\$500) for each additional sales
43 location in a tent; and
 - 44 (C) two hundred dollars (\$200) for each additional sales
45 location in a structure;
- 46 from which the retailer proposes to sell the consumer
47 fireworks.

48 Upon receipt of the completed application form, the accompanying
49 fee, and, if required, the affidavit under subsection (b), the state

1 fire marshal shall issue a certificate of compliance to the retailer
2 for each sales location.

3 (b) A person seeking a certificate of compliance authorizing the
4 sale of consumer fireworks at retail from a structure identified in
5 section 4.5(b)(1), 4.5(b)(2), or 4.5(c) of this chapter, or from a tent
6 under section 4.5(a) of this chapter shall submit with the
7 application:

8 (1) an affidavit executed by a responsible party with personal
9 knowledge, establishing that consumer fireworks were sold at
10 retail or wholesale from a structure at the same location as of
11 a date set forth in section 4.5(b)(1), 4.5(b)(2), or 4.5(c) of this
12 chapter, or from a tent as of a date set forth under section
13 4.5(a)(9) of this chapter; and

14 (2) proof of sales of consumer fireworks from that location.

15 (c) A person may not sell consumer fireworks at retail if a
16 certificate of compliance from the state fire marshal has not been
17 issued for the location showing registration under subsection (a).

18 (d) A certificate of compliance issued to a retailer of consumer
19 fireworks is not transferable except to a subsequent owner or
20 operator of a business at the same location in accordance with the
21 policies and guidelines of the state fire marshal.

22 SECTION 12. IC 22-11-14-12 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JUNE 1, 2006]: Sec. 12. (a) A user fee, known as the
25 public safety fee, is imposed on retail transactions made in Indiana
26 of fireworks, in accordance with section 13 of this chapter.

27 (b) A person who acquires fireworks in a retail transaction is
28 liable for the public safety fee on the transaction and, except as
29 otherwise provided in this chapter, shall pay the public safety fee
30 to the retailer as a separate added amount to the consideration in
31 the transaction. The retailer shall collect the public safety fee as an
32 agent for the state.

33 (c) The public safety fee shall be deposited in the state general
34 fund.

35 (d) The department of state revenue shall adopt rules under
36 IC 4-22-2 necessary for the collection of the public safety fee
37 monies from retailers as described in subsections (b) and (c).

38 SECTION 13. IC 22-11-14-13 IS ADDED TO THE INDIANA
39 CODE AS A NEW SECTION TO READ AS FOLLOWS
40 [EFFECTIVE JUNE 1, 2006]: Sec. 13. (a) The public safety fee is
41 measured by the gross retail income received by a retail merchant
42 in a retail unitary transaction of fireworks and is imposed at the
43 following rates:

| PUBLIC SAFETY FEE | GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION | |
|-------------------------|--|--------|
| \$ 0 | less than | \$0.10 |
| \$ 0.01 | at least \$ 0.10 but less than | \$0.30 |

| | | | | |
|---|---------|------------------|---------------|--------|
| 1 | \$ 0.02 | at least \$ 0.30 | but less than | \$0.50 |
| 2 | \$ 0.03 | at least \$ 0.50 | but less than | \$0.70 |
| 3 | \$ 0.04 | at least \$ 0.70 | but less than | \$0.90 |
| 4 | \$ 0.05 | at least \$ 0.90 | but less than | \$1.10 |

5 On a retail unitary transaction in which the gross retail income
6 received by the retail merchant is one dollar and ten cents (\$1.10)
7 or more, the public safety fee is five percent (5%) of that gross
8 retail income.

9 (b) If the public safety fee computed under subsection (a) results
10 in a fraction of one-half cent (\$0.005) or more, the amount of the
11 public safety fee shall be rounded to the next additional cent.

12 SECTION 14. IC 22-11-14-14 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JUNE 1, 2006]: **Sec. 14. An individual who:**

15 (1) is an individual retailer or is an employee, an officer, or a
16 member of a corporate or partnership retailer; and

17 (2) has a duty to remit the public safety fee as described in
18 section 12 of this chapter to the department of state revenue;
19 holds the public safety fees collected in trust for the state and is
20 personally liable for the payment of the public safety fee money to
21 the state.

22 SECTION 15. IC 22-11-14-15 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE UPON PASSAGE]: **Sec. 15. The fire prevention and
25 building safety commission and the department of state revenue
26 shall adopt rules under IC 4-22-2 to carry out this chapter.**

27 SECTION 16. IC 31-37-2-7 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
29 UPON PASSAGE]: **Sec. 7. A child commits a delinquent act if,
30 before becoming eighteen (18) years of age, the child violates
31 IC 22-11-14-6(c) concerning minors and fireworks.**

32 SECTION 17. IC 35-47-7-7 IS ADDED TO THE INDIANA CODE
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
34 UPON PASSAGE]: **Sec. 7. (a) If:**

35 (1) a practitioner (as defined in IC 25-1-9-2) initially treats a
36 person for an injury and identifies the person's injury as
37 resulting from fireworks or pyrotechnics, the practitioner; or
38 (2) a hospital or an outpatient surgical center initially treats
39 a person for an injury and the administrator of the hospital or
40 outpatient surgical center identifies the person's injury as
41 resulting from fireworks or pyrotechnics, the administrator
42 or the administrator's designee;

43 shall report the case to the state health data center of the state
44 department of health not more than five (5) business days after the
45 time the person is treated. The report may be made in writing on
46 a form prescribed by the state department of health.

47 (b) A person submitting a report under subsection (a) shall
48 make a reasonable attempt to include the following information:

49 (1) The name, address, and age of the injured person.

(2) The date and time of the injury and the location where the injury occurred.

(3) If the injured person was less than eighteen (18) years of age at the time of the injury, whether an adult was present when the injury occurred.

(4) Whether the injured person consumed an alcoholic beverage within three (3) hours before the occurrence of the injury.

(5) A description of the firework or pyrotechnic that caused the injury.

(6) The nature and extent of the injury.

(c) A report made under this section is confidential for purposes of IC 5-14-3-4(a)(1).

(d) The state department of health shall compile the data collected under this section and submit a report of the compiled data to the legislative council in an electronic format under IC 5-14-6 not later than December 31 of each year.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 22-11-14.5-2; IC 35-47-7-6.

SECTION 19. [EFFECTIVE UPON PASSAGE] The department of homeland security shall report to the budget committee not later than July 1, 2006, on the feasibility of creating a regional program to:

- (1) train public safety service providers under IC 10-19-9-3; and
- (2) provide advanced training programs in public safety and homeland security matters under IC 10-19-9-4.

The report must set out the need for the training, identify possible locations where training could take place, provide an estimate of the costs for providing such training, and include other things the department determines to be relevant.

SECTION 20. [EFFECTIVE UPON PASSAGE] (a) There is appropriated from the public safety fees collected under IC 22-11-14-12, as added by this act, one million dollars (\$1,000,000) to the department of homeland security to provide regional training for public safety service providers or advanced training programs during the period beginning July 1, 2006, and ending June 30, 2007. Funds appropriated by this subsection may be allotted by the budget agency after review by the budget committee. The amount of the appropriation shall be paid from the first one million dollars (\$1,000,000) collected under IC 22-11-14-12, as added by this act.

(b) There is appropriated from the public safety fees in excess of one million dollars (\$1,000,000) collected under IC 22-11-14-12, as added by this act, one million dollars (\$1,000,000) to the department of homeland security beginning July 1, 2006, and ending June 30, 2007. Funds appropriated by this subsection may be allotted by the budget agency after review by the budget committee. The amount appropriated shall be used at the

discretion of the executive director of the department of homeland security for the following purposes:

(1) For deposit in the state disaster relief fund established under IC 10-14-4-5. The amount deposited under this subdivision shall be used to pay for damage resulting from a disaster (as defined in IC 10-14-3-1) to a public facility (as defined in IC 10-14-4-4) owned by, maintained by, or operated by or on behalf of an eligible entity (as defined in IC 10-14-4-2), in accordance with the provisions of IC 10-14-4.

(2) To defray the costs of response, recovery, or the twenty-five percent (25%) of the costs required to be paid by local jurisdictions, which have accrued as a result of a disaster that is the subject of a disaster declaration by the federal government.

SECTION 21. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 22-11-14-2(a) and IC 22-11-14-8(e), both as amended by this act, and IC 22-11-14-3.5 and IC 22-11-14-15, both as added by this act, the fire prevention and building safety commission shall carry out the duties imposed upon it by this act with respect to the matters referred to in IC 22-11-14-2(a) and IC 22-11-14-8(e), both as amended by this act, and IC 22-11-14-3.5 and IC 22-11-14-15, both as added by this act, under interim written guidelines approved by the state fire marshal.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are respectively adopted under IC 22-11-14-2(a) and IC 22-11-14-8(e), both as amended by this act, and IC 22-11-14-3.5 and IC 22-11-14-15, both as added by this act.

(2) December 31, 2007.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 22-11-14-12(d) and IC 22-11-14-15, both as added by this act, the department of state revenue shall carry out the duties imposed upon it by this act with respect to the matters referred to in IC 22-11-14-12(d) and IC 22-11-14-15, both as added by this act, under interim written guidelines approved by the commissioner of the department of state revenue.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are respectively adopted under IC 22-11-14-12(d) and IC 22-11-14-15, both as added by this act.

(2) December 31, 2007.

SECTION 23. An emergency is declared for this act.

(Reference is to EHB 1099 as reprinted March 3, 2006.)

Conference Committee Report
on
Engrossed House Bill 1099

Signed by:

Representative Frizzell
Chairperson

Senator Weatherwax

Representative Crooks

Senator Lewis

House Conferees

Senate Conferees